IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3609 of 1986
with
CIVIL REVISION APPLICATION No 7 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEEPAK MANDAL, CHARITY TRUST

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3609 of 1986
M/S TRIVEDI & GUPTA for Petitioner No. 1
..... for Respondent No. 1

2. Civil Revision Application No. 7 of 1986
MR KB TRIVEDI for Petitioner No. 1
MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 01/08/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

The petitioner, who is engaged in promoting education by establishing and administering two schools viz. (i) St. Xavier's High School at Jamnagar and (ii) St. Mary School at Rajkot, in this petition challenged the resolution bearing No. UMS-1284/202/G.1 dated 6.11.1985 issued by the State Government laying down the rules for giving admissions to the students in the Science Stream of Higher Secondary Education. According to the petitioner, the said resolution puts unreasonable restrictions on the fundamental rights of the petitioner-trust to grant admissions in their schools in Standard XI to the students of their own choice who pass the examination of Standard X or its equivalent examination. The petitioner has, therefore, prayed for quashing and setting aside the said resolution and also prayed for a writ in the nature of prohibition or any other appropriate writ, order or direction prohibiting the respondent-Government, their servants, officers and agents from applying and enforcing the said resolution to the schools run by the petitioner-trust.

3. Even though this Court has issued the Rule on 21.7.1986 and made its returnable on 28.7.1986, for any reason, the petition is not taken up for hearing. The respondent, though served, has not file the reply affidavit. Considering the fact of time-lag in the matter and in view of different decisions which have been rendered in such cases, we dispose of this petition by directing the Secretary, Education Department of the State of Gujarat to consider the grievance voiced in this petition in light of the judgment rendered by the Apex Court in the case of TMA Pai Foundation vs. State of Karnataka, (2002) 8 SCC 481. We, however, make it clear that we are not expressing any opinion about the impugned resolution issued by the State Government and we leave the said question, namely, the validity and/or propriety of the said resolution to be decided by the Secretary, Education Department. The Secretary, Education Department shall undertake the said exercise after hearing the petitioner and shall pass a reasoned order as early as possible and preferably within eight weeks from the date of receipt of this order.

4. Subject to the above direction, Rule is discharged. No costs.

5. In view of the above order, no order is required

to be passed in the Civil Revision Application and the same is accordingly rejected.

(KSHITIJ R. VYAS, J.)

(SHARAD D. DAVE, J.)

sundar/-